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NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
05 DHC 50

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROBERT D. FLOYD, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND CONSENT ORDER
OF DISCIPLINE

This matter was considered by a hearing committee of the Disciplinary Hearing Commission composed of T. Richard Kane, Chair, and members John M. May and Donald G. Willhoit. Jennifer A. Porter represented the Plaintiff, the North Carolina State Bar. The Defendant, Robert D. Floyd, represented himself. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Robert D. Floyd ("Floyd"), was admitted to the North Carolina State Bar in 1983 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Floyd was engaged in the practice of law in the State of North Carolina and maintained a law office in Shallotte, Brunswick County, North Carolina.

4. Floyd was properly served with process, a hearing in this matter was set, and the matter came before the hearing committee with due notice to all parties.

5. Floyd unlawfully and willfully failed to file his federal individual income tax return for 1999, 2000, 2001, 2002, and 2003 when such tax returns were due, as required by 26 U.S.C. § 6012.

6. Floyd unlawfully and willfully failed to pay his federal individual income taxes for 1999, 2000, 2001, 2002, and 2003 when such payment was due, as required by 26 U.S.C. § 6012.

7. Willful failure to file or pay a federal income tax when due is a misdemeanor punishable by either a fine, imprisonment, or both under 26 U.S.C. § 7203.

8. Floyd unlawfully and willfully failed to file his state individual income tax return for 1999, 2000, 2001, 2002, and 2003 when such tax returns were due, as required by N.C. Gen. Stat. §§ 105-152 and 105-157.

9. Floyd unlawfully and willfully failed to pay his state individual income taxes for 1999, 2000, 2001, 2002, and 2003 when such payment was due, as required by N.C. Gen. Stat. §§ 105-152 and 105-157.

10. Willful failure to file or pay a state income tax when due is a Class 1 misdemeanor under N.C. Gen. Stat. § 105-236 (9).

11. Floyd was charged in Wake County, North Carolina with willful failure to file his state individual income tax returns for the years 1999, 2000, 2001, 2002, and 2003.

12. On or about April 22, 2005 Floyd pled guilty to willful failure to file his state individual income tax return for the years 1999, 2000, 2001, 2002, and 2003.

13. Floyd was sentenced on or about August 8, 2005, by which time Floyd had filed all outstanding federal and state tax returns and had paid all outstanding amounts owed.

14. Floyd was sentenced to 45 days in jail and ordered to pay \$100.00 fine and court costs. The period of incarceration was suspended and Floyd was placed on unsupervised probation for twelve months.

15. Willful failure to file a tax return is a criminal offense showing professional unfitness as defined by 27 N.C.A.C. 1B § .0103 (17).

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, Robert D. Floyd, and the subject matter.

2. The Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline as follows:

a. Pursuant to N.C. Gen. Stat. § 84-28(b)(1), for conviction for failure to file state individual income tax returns for years 1999, 2000, 2001, 2002, and 2003 when such returns were due, a criminal offense showing professional unfitness; and

b. Pursuant to N.C. Gen. Stat. § 84-28(b)(2), for engaging in conduct in violation of the Revised Rules of Professional Conduct, in effect at the time of his actions as follows:

- i. By unlawfully and willfully failing to timely file and/or pay state income taxes for years 1999, 2000, 2001, 2002, and 2003, Floyd committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and
- ii. By unlawfully and willfully failing to timely file and/or pay federal income taxes for years 1999, 2000, 2001, 2002, and 2003, Floyd committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Floyd's misconduct is aggravated by the following factors:
 - a. Pattern of misconduct;
 - b. Multiple offenses; and
 - c. Substantial experience in the practice of law.
2. The Defendant's misconduct is mitigated by the following factors:
 - a. Timely good faith effort to make restitution or to rectify the

consequences, including having paid the North Carolina Department of Revenue his overdue state taxes;

- b. Full and free disclosure to the hearing committee and a cooperative attitude toward the proceedings;
 - c. Imposition of other penalties or sanctions, to wit: court costs and fine as described above;
 - d. Floyd suffered from health related difficulties at the time of the misconduct that led to neglect of personal matters;
 - e. Floyd has taken significant steps to rehabilitate himself and tend to his personal affairs;
 - f. No prior discipline; and
 - g. Remorse.
3. The mitigating factors outweigh the aggravating factors.

Based upon the foregoing factors and with the consent of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of the Defendant, Robert D. Floyd, is hereby suspended for two (2) years and that suspension is stayed for two (2) years upon the following terms and conditions. During the stayed suspension, the Floyd shall:
- a. Comply with the terms of all agreements with the Internal Revenue Service and the North Carolina Department of Revenue in existence during the stay;
 - b. Provide the State Bar with documentation from the Internal Revenue Service (IRS) showing compliance with the terms of any agreements with the IRS, documenting compliance from the date of the entry of this order through sixty (60) days prior to the expiration of the two year stay and filed with the State Bar no later than fifteen (15) days prior to expiration of the two year stay;
 - c. File and pay all future state and federal income taxes in a timely manner;

d. Provide the State Bar with copies of all state and federal income tax returns filed during the stay and proof of payment of income taxes due during the stay. Such returns and/or any requests for extensions or other documents related to the filing and/or payment of Floyd's state or federal individual income tax shall be provided to the State Bar within ten (10) days of the filing of such document(s) with the Internal Revenue Service or the North Carolina Department of Revenue;

e. Not violate any laws of the State of North Carolina or of the United States;

f. Not violate any provision of the Revised Rules of Professional Conduct;

g. Pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within 30 days of notice of the costs being served upon him;

h. Pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education requirements on a timely basis; and

i. Keep his address of record with the North Carolina State Bar current, accept all certified mail from the North Carolina State Bar, and

j. Respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication.

2. If during the stay of the two (2) year suspension Floyd fails to comply with any one or more of the conditions stated in Paragraph 1(a) through 1(j) above, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

3. If the stay of the suspension is lifted and the suspension is activated for any reason, Floyd must show by clear, cogent, and convincing evidence that he complied with each of the following conditions before seeking reinstatement:

a. Submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating his suspension;

b. Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules on a timely basis;

c. Not violated any of the Revised Rules of Professional Conduct;


- d. Not violated any laws of the State of North Carolina or of the United States;
 - e. Paid all costs of this proceeding as assessed by the Secretary;
 - f. Show he has complied with the terms of any payment agreements with the Internal Revenue Service and the North Carolina Department of Revenue in effect during the suspension period;
 - g. Provided the State Bar with documentation from the Internal Revenue Service and the North Carolina Department of Revenue showing compliance with the terms of any payment agreements with these entities during the suspension period;
 - h. Timely filed and paid any state or federal income taxes coming due during the period of the suspension;
 - i. Provided the State Bar with copies of all income tax returns filed during the suspension and proof of payment of any income taxes coming due during the suspension, filed with the State Bar within ten (10) days of filing with the Internal Revenue Service or the North Carolina Department of Revenue;
 - j. If the suspension was activated for Floyd's failure to timely file and/or pay state and/or federal individual income tax, Floyd will have rectified the deficiency by filing and/or paying as appropriate the income tax(es) at issue and will have provided proof of such to the State Bar;
 - k. Paid all Membership dues and Client Security Fund assessments and complied with all Continuing Legal Education requirements on a timely basis as if still in practice during the suspension;
 - l. Kept his address of record with the North Carolina State Bar current;
 - m. Accepted all certified mail from the North Carolina State Bar, and
 - n. Responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in communications to him from the State Bar.
4. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

Signed by the Chair with the consent of the other hearing committee members,
this the 10th day of JANUARY, 2005.



T. Richard Kane
Chair, Disciplinary Hearing Committee

CONSENTED TO BY:



Jennifer A. Porter
Deputy Counsel
Attorney for Plaintiff



Robert D. Floyd
Defendant